



ILLINOIS COMMERCE COMMISSION

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January 28, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Washington D.C. 20554

Re: In the Matter of Access Charge Reform
CC. Docket Nos. 96-262 et al.

Dear Mr. Caton:

Enclosed please find for filing with the Commission an original and sixteen copies of the Comments of the Illinois Commerce Commission. As indicated on the enclosed certificate of service, I have transmitted two copies of these comments to the Competitive Pricing Division of the Commission's Common Carrier Bureau. I am also enclosing a copy of the Comments on 3.5 inch computer diskette. The comments are in WordPerfect 5.1 for Windows. The diskette is being submitted to you in "read only" mode.

Please acknowledge receipt of this filing by date-stamping and returning the enclosed duplicate copy of this letter in the envelope provided.

Sincerely,

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CERTIFICATE OF SERVICE

I, Myra L. Karegianes, an attorney, hereby certify that copies of the Comments of the Illinois Commerce Commission in Federal Communications Commission CC Docket Numbers 96-262 et al., were served upon the persons on the attached Service List, by overnight mail, postage prepaid, on this 28th day of January, 1997. In addition, I served two copies of the Comments on the Competitive Pricing Division of the Commission's Common Carrier Bureau.

Myra L. Karegianes
Myra L. Karegianes

SERVICE LIST FEDERAL COMMUNICATION COMMISSION DOCKET NUMBER
96-262

William F. Caton
Acting Secretary
Federal Communications Commission
Washington D.C. 20554

Competitive Pricing Division
Common Carrier Bureau
Room 518
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Washington D.C. 20554

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)	
Access Charge Reform)	CC Docket No. <u>96-262</u>
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched Network by Information Service and Internet Access Providers)	CC Docket No. 96-263
)	

COMMENTS OF
THE ILLINOIS COMMERCE COMMISSION

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January 29, 1997

**COMMENTS OF
THE ILLINOIS COMMERCE COMMISSION**

TABLE OF CONTENTS

I.	Introduction and Summary	1
II.	Adjustments to the Current Interstate Access Charge System	4
A.	Adjustments to Access Charge Rate Structure	5
1.	Carrier Common Line Charge	6
2.	Subscriber Line Charge	9
3.	Local Switching Costs	11
4.	Transport	12
5.	Transport Interconnection Charge	12
6.	New Technologies	13
B.	Adjustment of Access Charge Rate Levels	14
1.	Market-based Approach	15
a.	Evaluation of Competition	16
b.	Flexibility during the Proposed Phases	20
2.	Prescriptive Approach	23
III.	Coordination between Access Charge Reform and Separations Reform .	25
IV.	Coordination between Access Charge Reform and Universal Service Reform	26
V.	Regulation of Terminating Access	26
VI.	Treatment of Interstate Information Services	27
VII.	Conclusion	28

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and Internet Access Providers)	
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COMMENTS OF
THE ILLINOIS COMMERCE COMMISSION

I. Introduction and Summary

On December 24, 1996, the Federal Communications Commission ("FCC") issued a Notice of Proposed Rulemaking ("NPRM") seeking comment on interstate access charge reform. The Illinois Commerce Commission ("ICC") submits its comments to the FCC regarding the NPRM. Reform of the current interstate access charge system is of interest to the ICC because of the potentially significant impact that changes will have on consumers and telecommunications providers in Illinois.

Based upon its analysis of the FCC's NPRM, the ICC concludes that:

As a general principle, incumbent local exchange carriers ("LECs") should be given flexibility to modify their access services to respond to competitive pressures and to encourage economic use of their networks. However,

some rate structure and level changes may be needed to the extent current rate structures and levels impede competition or provide implicit universal service subsidies.

A market-based approach should be adopted to let market pressures drive access prices and allow incumbent LECs regulatory flexibility to respond to competition. The prescriptive approach discussed by the FCC is inadvisable and unnecessary.

Non-traffic sensitive ("NTS") local loop costs should be removed from Carrier Common Line Charges ("CCLCs"), either through increases in Subscriber Line Charges ("SLC") assessed on all network access lines or through a change in the separations process.

Incumbent LECs should be given flexibility to geographically deaverage the SLCs.

NTS switching and transport costs should be recovered in an NTS manner. Incumbent LECs should be given flexibility to establish call setup charges and peak/off-peak pricing for local switching and transport services.

Embedded costs currently recovered through the transport interconnection charge ("TIC") should be reassigned to other rate elements to the extent cost causation can be established, and incumbent LECs should be allowed to raise prices for those other rate elements to which costs have been reassigned in order to offset the reductions in the TIC. If some remaining amount cannot be reallocated, rate reductions required by the price cap mechanism should be focused on the TIC until it is phased out.

It may be reasonable to allow incumbent LECs to offer new access services on a non-price cap basis. However, if the service is a variation of an existing access service, or if it provides an essential function not reasonably available from other carriers, the service may need to be included in the appropriate price cap basket.

The FCC's proposed criteria for Phase 1 flexibility under the market-based approach are reasonable. In addition, a Bell Operating Company ("BOC") should be allowed to receive Phase 1 flexibility upon approval of an application for interLATA authority, if the BOC has not received Phase 1 flexibility prior to such date.

Several different market measures should be analyzed to assess "competitive presence" (Phase 2) or "substantial competition" (the threshold for price deregulation). In addition to factors cited by the FCC, the rate of growth by new entrants, other measurements of change, and marketing

information would provide valuable information. While the same measures may be used for analyses of competitive presence and substantial competition, it should be easier to establish that the market has developed to the point that the competitive presence threshold has been met.

The FCC's proposed criteria for Phase 2 flexibility are reasonable. However, the relative importance of the individual criteria should be assessed on a case-by-case basis.

The ICC supports an analysis of competitive presence or substantial competition on a service-by-service basis, and within geographic regions as appropriate.

The ICC supports granting incumbent LECs the flexibility to deaverage access charges on a geographic basis and to adopt volume and term discounts, perhaps even before Phase 1. The FCC should use total service long run incremental cost ("TSLRIC") or another measure of forward-looking costs as a price floor where pricing flexibility is granted, to prevent cross subsidization. The ability to enter into contracts may only be appropriate after it is shown that a certain level of competition exists.

The ICC supports differential pricing if certain conditions are met, perhaps before Phase 2.

It is important to coordinate separations and access charge reform, since overallocation of NTS costs to access charges assessed to interexchange carriers ("IXCs") is one of the basic problems with the current access charge structure. The Telecommunications Act of 1996 ("federal Act") calls into question the continued applicability of decades-old case law underlying the current separations process.

The FCC should eliminate implicit subsidies in access charges and reflect these changes as it resolves universal service issues in CC Docket No. 96-45.

The ICC recommends that restrictions be placed on the prices of access services of new LECs that the FCC determines to be bottleneck services. A reasonable approach would be to require that new LECs may not charge prices for such access services that are higher than the prices charged by the incumbent LEC for comparable access services.

Information service providers ("ISPs") should be required to compensate LECs for the costs they impose on the local network. The current policy that exempts ISPs from access charges should be reconsidered as access charges are reduced.

II. Adjustments to the Current Interstate Access Charge System

The ICC believes that the current interstate access charge system suffers from several problems. These problems are attributable to its inefficient rate structure and excessive rate levels. Consequently, the current access charge system impedes the efficient and economic use of incumbent LEC facilities and services. It also impedes economic entry by competing carriers. In addition, the current access charge system provides implicit universal service subsidies between high cost and low cost areas, contrary to Section 254(e) of the federal Act. Finally, the current system does not allow incumbent LECs the flexibility needed to respond adequately to competitive pressures where present.

The ICC's preference for correcting the above mentioned deficiencies is to rely on market forces and incentives to the extent possible. The ICC believes that, given regulatory flexibility to the extent consistent with other objectives, incumbent LECs can be expected to remedy problems regarding economic use of their facilities and services. They can also be expected to make decisions that respond to competitive pressures. However, incumbent LECs may not be as interested in correcting implicit subsidy and anticompetitive problems. As a result, some rate structure and level changes may be needed to the extent current rate structures and levels impede competition. Such changes may be needed to assist with the development of competition and the market forces needed to allow reliance on a market-based approach to deal with the remaining shortcomings of the current system.

The ICC proposes that the FCC examine the possible reforms suggested in the NPRM in light of their expected effectiveness and the practical feasibility of creating, administering, and enforcing the proposed solutions. With this information in hand, the FCC should then adopt strong market-based solutions such that incumbent LECs will make the desired reforms. The ICC also recommends certain rate structure changes and the shift of NTS local loop costs from access charges paid by IXCs, as steps needed to remove current cross-subsidy problems that could impede the development of competition needed to support a market-based approach. The ICC finds the prescriptive approach discussed by the FCC, in which the FCC would mandate access charge reductions on the basis of TSLRIC studies, to be inadvisable and unnecessary, as discussed herein.

The remainder of these comments follows the general format of the NPRM. Possible rate design changes are discussed first, followed by an assessment of the market-based and prescriptive approaches discussed by the FCC as ways by which overall access charge levels may be modified. Later sections address separations and universal service reform, access charges of new entrants, and treatment of ISPs.

A. Adjustments to Access Charge Rate Structure

The ICC recommends that the FCC allow incumbent LECs certain flexibility in designing the rate structure of their interstate access charges. With regard to rate structure changes aimed at improving efficiency or responding to competitive

pressures, such changes are better left to LECs, since they would reap benefits of improved usage of their networks and thus have incentives, at this time, to make the appropriate changes. In addition, certain rate structure changes are needed to correct existing anticompetitive problems. As competition develops, LEC ability to maintain anticompetitive rate structures will decline, and any FCC mandates imposed at this time can be relaxed.

As a general principle, the ICC supports the FCC's proposal to recover NTS costs in an NTS manner. Such an approach allows for the efficient recovery of NTS costs. It prevents the overrecovery of NTS costs through usage-sensitive rates collected from interstate calls with long duration. It also prevents high volume users from subsidizing low volume users through access charges, an outcome which is inconsistent with the implicit subsidy prohibition imposed by Section 254(e) of the federal Act.

1. Carrier Common Line Charge

In its NPRM, the FCC proposes the continued recovery from IXCs of revenues currently recovered through the CCLC. The FCC discusses three alternative ways to continue to recover the CCLC revenues from IXCs, which we discuss in turn.

a. Flat per-line charge.¹ The ICC does not support this method of recovery. To the extent the per-line charges are recovered through higher long distance rates, this would discourage customers from making IXC calls, thereby

¹NPRM at para. 60.

distorting demand for long distance services. In turn, this would reduce the ability of the IXC to recover these per-line charges through its usage rates. Further, this proposal would not provide IXCs with the ability to recover the per-line charge if there is dial-around traffic. In addition, charging IXCs a per-line charge may discriminate against AT&T, since it has been asserted that AT&T retains a disproportionate amount of customers who have little or no toll usage.

With regard to the FCC's proposal to assess the per-line charge directly on end users who do not presubscribe to an IXC, the ICC believes implementing such an approach would be difficult administratively and extremely confusing to customers.

b. Capacity charge, trunk port charge, or a combination of trunk port and line port charges.² These charges would be alternative ways of recovering the CCLC revenues based on the IXCs' actual usage of the incumbent LEC network. There are efficiency problems with each of these approaches, since they are based solely on the usage of the incumbent LEC network. This may encourage uneconomic bypass of the incumbent LEC's network by IXCs for no reason other than to avoid the charges.

c. Bulk billing.³ Of the three possible recovery mechanisms discussed by the FCC, this is the ICC's preferred approach. It would not have the efficiency problems or negative effects on competition inherent in the other approaches. However, the ICC prefers more direct alternatives.

²NPRM at para. 61.

³NPRM at para. 61.

The ICC recommends either of two approaches as preferable to any method that continues to recover NTS loop costs from IXCs. The FCC could recover the loop costs currently included in the CCLC through increases in the SLCs assessed on all network access lines. This would be more efficient than any of the alternatives the FCC discusses and would avoid the perpetuation of implicit universal service subsidies. Increases in the SLC should not affect universal service, since the existing means-based support mechanisms for low-income customers would continue to be available.

Alternatively, the FCC could modify the separations process to reduce or eliminate the amount of loop costs assigned to the interstate jurisdiction. The FCC has recognized the need to revisit current separations rules.⁴ The current practice of allocating 25 percent of incumbent LEC local loop costs to the interstate jurisdiction appears to be inappropriate with the advent of competition and inconsistent with the move in the federal Act and the FCC rules toward nonjurisdictional treatment of local exchange network elements. The federal Act calls into question the continued applicability of decades-old case law⁵ underlying the current separations process.

The existing separations process perpetuates an inequality between incumbent LECs and new entrants that appears to impede competition, both in the local market and in the long distance market. The FCC does not require new entrants to separate their local loop costs into interstate and intrastate

⁴NPRM at paras. 6 and 249.

⁵Smith vs. Illinois Bell Telephone Company, 282 U.S. 1313 (1930).

components. While new entrants may be able to recover some of their loop costs through their own access charges, they certainly do not have the option of "bulk billing" their costs to IXC's, as the FCC has discussed for incumbent LEC's. The most equitable approach would be to leave the local loop costs with the local loop, and let carriers in both the local and long distance markets compete on a level playing field basis.

Since separations changes must be referred to a Federal-State Joint Board, the ICC is not proposing that the FCC adopt separations changes at this time. Unless and until the separations mechanism is changed, the ICC's preference for recovering NTS local loop costs currently in the CCLC is to increase the SLCs assessed on all network access lines.

2. Subscriber Line Charge

In its NPRM, the FCC proposes to eliminate the caps or increase the SLCs assessed on second and additional lines for residential customers and on all lines for multi-line business customers, without changing the SLCs assessed on the first residential line and on single-line business customers.⁶

The ICC believes this solution is administratively problematic. Such a solution may encourage residential and business customers to use different names when obtaining second lines, or to buy second or additional lines from different carriers solely to avoid the higher SLC associated with those lines. A preferable alternative would be for the FCC to make any modifications to the SLC on a

⁶NPRM at para. 65.

consistent basis for all residential and business customer lines. As we have discussed above, another alternative would be for reallocation of loop costs through changes in the separations process.

The ICC supports the FCC's transition period proposal associated with any increase in the SLC.⁷ If the SLC is increased by \$1 or less, this increase should be implemented in a flash cut manner. However, if the increase exceeds \$1, the FCC should consider phasing in that increase over a multi-year period.

In its NPRM, the FCC requests comment on deaveraging the SLC.⁸ The ICC believes that the current geographic averaging of SLCs constitutes an implicit subsidy, which is inconsistent with the requirements set forth in Section 254(e) of the federal Act. As a result, the ICC proposes that deaveraging the SLC should be allowed. However, the ICC believes that it would be reasonable to allow the incumbent LECs to decide, within minimal federal or state guidelines, whether and to what extent they should geographically deaverage the SLC. Incumbent LECs are the appropriate party to make that assessment, as a possible response to competition and to encourage more efficient use of their networks.

The minimal guidelines could allow SLC deaveraging to the same extent that unbundled network elements⁹ or network access lines¹⁰ are deaveraged, i.e.,

⁷NPRM at para. 66.

⁸NPRM at para. 67.

⁹47 U.S.C. Section 51.507(f) (currently stayed pending appeal) would require State commissions to establish different rates for elements in at least three defined geographic areas within the state.

¹⁰The ICC has required that Ameritech Illinois deaverage its rates for network access lines and unbundled network elements, with different rates for three geographic areas, commonly referred to as metropolitan, suburban, and downstate areas.

within the same geographic areas. This would be administratively simple, since no additional determination of appropriate geographic areas would be required, and would allow rate structures consistent with unbundled network elements and end user rates.

3. Local Switching Costs

The FCC proposes to recover the NTS line card costs and other NTS local switching costs in an NTS manner.¹¹ The ICC supports this rate structure modification, as a change needed to reduce impediments to competition. The ICC also notes that it may be reasonable for the FCC to consider recovering the line card costs, currently included in the local switching charge, through a charge comparable to the SLC assessed on end users. This is because the line side port costs are incurred on an NTS basis as an unavoidable cost of an end user's network access. Another alternative would be to modify separations procedures as discussed above.

The FCC also proposes to allow LECs to create call setup charges¹² as well as peak and off-peak pricing.¹³ The ICC believes it is reasonable to allow these options to promote competition. However, rather than mandating these changes, it would be more appropriate to allow the incumbent LEC to determine whether,

¹¹NPRM at para. 72-73.

¹²NPRM at para. 76.

¹³NPRM at paras. 77-78.

and to what extent, such rate structures are more efficient than the rate structure the incumbent LEC currently has in place.

4. Transport

In its NPRM, the FCC proposes flat rate charges for entrance facilities and direct-trunked transport services.¹⁴ The ICC agrees that it is reasonable to adopt such a rate structure to the extent that such facilities are dedicated facilities, in order to reduce impediments to competition.

The FCC also proposes to permit or require incumbent LECs to develop peak load pricing for tandem-switched transport service.¹⁵ The ICC believes that incumbent LECs should be permitted, not required, to develop peak load pricing for tandem-switched transport service. LECs are best able to determine the extent to which costs vary by time of day and to assess the peak period, which may vary by geographic area and from one year to the next.

5. Transport Interconnection Charge

In its NPRM, the FCC proposes several options for addressing the TIC. The FCC proposes to reassign elsewhere those identifiable costs included in the TIC and to phase out the remainder.¹⁶ The ICC believes that embedded costs currently recovered through the TIC should be reassigned to other rate elements to

¹⁴NPRM at para. 87.

¹⁵NPRM at para. 90.

¹⁶NPRM at para. 117.

the extent cost causation can be established. The incumbent LEC should be given additional flexibility, if needed within the price cap framework, to raise prices for those other rate elements to which costs have been reassigned in order to offset the reductions in the TIC.

While recognizing that LECs' access rates may have diverged from embedded costs since the price cap mechanism was implemented, the ICC does not see any reason why all of the costs recovered by the TIC could not be reallocated in this manner. However, if some remaining amount cannot be reallocated, the ICC recommends that rate reductions required by the price cap mechanism be focused on the TIC until it is phased out.

6. New Technologies

The FCC seeks comment on whether, and how, it should take new technologies (e.g., SONET, ATM and AIN) into account when modifying access charge rules.¹⁷ The FCC also seeks comment on offering new services outside of price caps.¹⁸

In Docket 92-0448, the ICC adopted procedures to accommodate the provision of new intrastate services by a price cap incumbent LEC (Ameritech Illinois). The ICC determined that new services should be treated according to whether they meet the Illinois statutory criteria for competitive or noncompetitive services, as set forth in Section II.B.1.a below. Consistent with the treatment of

¹⁷NPRM at para. 139.

¹⁸NPRM at paras. 197-200.

existing competitive services, new competitive services would be excluded from the intrastate price cap mechanism and would receive broad pricing flexibility, including contract carriage. New noncompetitive services would be included in the intrastate price cap mechanism after the service had been offered for one year. To incorporate a new noncompetitive service in the affected service basket, the demand weighting in the actual price index ("API") calculation would be for the most recent July to June period.¹⁹

The FCC may wish to consider a comparable model for new interstate services. If the service is a variation of an existing access service, or if it provides an essential function not reasonably available from other carriers, the service may need to be included in the appropriate price cap basket. Otherwise, it may be reasonable to allow the LEC to offer the service on a non-price cap basis.

B. Adjustment of Access Charge Rate Levels

In addition to the rate structure changes discussed in the beginning sections of the NPRM, the FCC proposes to implement one of two approaches to move access prices for price cap incumbent LECs to competitive levels. The first is a "market-based approach" that would let market pressures drive access prices and would allow incumbent LECs regulatory flexibility to respond to competition. The second approach is a "prescriptive" approach in which the FCC would establish, with the assistance of State commissions, the "appropriate" levels for access rates. Under this approach, the FCC states that it would set access rates based on

¹⁹Order in Docket 92-0448, Appendix A at 6.

forward-looking costs. The FCC indicates a preference for the market-based approach and seeks comment on means according to which it can measure competition in a given market and the types of regulatory flexibilities it should provide price cap incumbent LECs as they face increasing competition.

1. Market-based Approach

The ICC strongly supports the reliance on market forces to determine appropriate rates whenever possible. Giving LEC management the flexibility to set access charges and modify the rate structure would allow the LEC to rationalize its interstate pricing structure and to more accurately reflect its costs. This approach would be easier to administer from a regulatory perspective than the prescriptive approach, which would require an elaborate and on-going effort by the FCC and state agencies, as discussed below.

While supporting the market-based approach, the ICC recognizes that its success will depend on careful structure of the benchmarks for moving from one phase to another and on careful monitoring of its performance. Incumbent LEC operations in the interLATA market may lead to price squeeze problems if the granted access charge pricing flexibility is too broad relative to the market forces at work. Further, there is no guarantee that the promise of more access charge rate flexibility would provide sufficient incentives for the incumbent LECs to open up their local markets, since the result would be lower prices and possibly lower profits. The possibility of interLATA relief for BOCs may provide a far stronger

incentive for opening up local markets than would the possibility of pricing flexibility in the access market.

The market-based approach, as detailed by FCC, would have significant administrative challenges. The ICC notes that in the interexchange market, the FCC's focus was on a single company, AT&T. However, in the case of access services, the FCC would have to look at the thirteen price cap incumbent LECs. While expressing the need for care in establishing a market-based regulatory approach, the ICC believes the market-based approach would be easier to implement and far preferable to a prescriptive approach.

a. Evaluation of Competition

The FCC proposes two phases during which regulation would be progressively relaxed: Phase 1 ("potential competition") and Phase 2 ("actual competition"). Following Phase 2, price regulation would be eliminated when "substantial competition" has developed. We address each of these phases in turn.

The FCC proposes Phase 1 triggers that are very similar to those set forth in Sections 251(c) and 252(d) of the federal Act.²⁰ The ICC supports these criteria. We also agree with the FCC's goal of minimizing delay in determining whether an incumbent LEC has achieved the Phase 1 triggers.²¹ This leads the ICC to propose a simple mechanism that a BOC could choose as an alternative to having

²⁰NPRM at paras. 169-179.

²¹NPRM at para. 177.

to demonstrate in a separate proceeding that it has met the requirements for Phase 1. Specifically, the ICC proposes that a BOC be allowed to receive Phase 1 flexibility upon approval of a Section 271 application for interLATA authority, if the BOC has not received Phase 1 flexibility prior to such date.

The FCC also proposes that incumbent LECs be required to meet the Phase 1 triggers on a state-by-state basis, since the incumbent LECs are required to open their networks throughout each state. The FCC seeks comment, however, on whether to allow an incumbent LEC to seek Phase 1 flexibility by geographic area within a state.²² We agree with the FCC that statewide requirements are appropriate for Phase 1, since the proposed Phase 1 triggers mirror the existing federal statutory requirements. The ICC has applied these requirements on a statewide basis in Illinois, and sees no reason to provide access charge flexibility to an incumbent LEC that has not complied with existing statutory and regulatory requirements.

The FCC proposes three factors for triggering phase 2:

- (1) Demonstrated presence of competition;
- (2) Full implementation of competitively neutral universal support mechanism; and
- (3) Credible and timely enforcement of pro-competitive rules.²³

The FCC seeks comment on how to determine when competition is sufficient for Phase 2, discussing measurements of market share such as number

²²NPRM at para. 178.

²³NPRM at para. 202.

of customer lines, residential lines, or access minutes; number of competitive switches; and number of customers receiving service from unbundled network elements or competitive facilities.²⁴

To move beyond Phase 2 to price deregulation, the incumbent LEC would have to show that it meets a higher standard of "substantial competition" in the access market. The FCC seeks comment on relevant factors, including demand and supply responsiveness; market share; supply and demand elasticities; and pricing trends, including incumbent LEC pricing below price caps.²⁵

The ICC agrees with the FCC that, while a simple measurable test would be easier to administer, analysis of several different variables would provide a clearer view of competitive presence.²⁶ The ICC stresses that any market analysis should not be formulaic, and should not be limited to static measurements. In addition to the factors cited by the FCC, the rate of growth by new entrants and other measurements of change, such as price changes and the introduction of new services, provide valuable information regarding the development of competition. The ICC also suggests that marketing efforts may indicate the extent to which new entrants are confident they can provide service. The ICC stresses that it is important to monitor the market on an on-going basis to identify trends and changes in market conditions.

²⁴NPRM at paras. 205 and 210.

²⁵NPRM at paras. 156-160.

²⁶NPRM at paras. 203-204.

It appears that the FCC recognizes that the evaluation of competition appropriate for Phase 2 should be a simpler analysis than that required to support a move to price deregulation. While the same measures may be used for analyses of "competitive presence" and "substantial competition," it should be easier to establish that the market has developed to the point that the "competitive presence" threshold has been met.

The ICC supports all three criteria the FCC proposes for Phase 2. However, the relative importance of the individual criteria will depend on the situation underlying an incumbent LEC's petition for Phase 2 flexibility. If a Phase 2 petition shows that the market has developed beyond a minimal presence of competition, the other two criteria may not be critical to ensure that regulatory flexibility for the incumbent LEC will not impede further development of competition. On the other hand, they may provide needed assurance in a situation where an incumbent LEC has reasonably opened its network to competition but only minimal competition has developed. Because market conditions cannot be predicted with accuracy, the ICC supports the retention of all three criteria, with the relative importance to be assessed on a case-by-case basis.

The FCC proposes to apply any "market-presence" or "substantial competition" test on a service-by-service basis and seeks comment on the relevant geographic area that should be considered.²⁷ The FCC asks whether the geographic areas should conform to the areas used for pricing unbundled network

²⁷NPRM at paras. 151, 205 and 210.

elements or the zones adopted in the Universal Service proceeding to determine high cost areas.²⁸

The ICC supports an analysis of competitive presence or substantial competition on a service-by-service basis, and within geographic regions as appropriate. Such an approach would be consistent with the procedures for competitive classification in Illinois. In Illinois, competitive reclassification and accompanying lessened regulatory requirements are carried out on a service-by-service and geographic basis. Section 13-502(b) of the Illinois Public Utilities Act states that,

A service shall be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under this Act. (220 ILCS 5/13-502(b)).

Adoption of a similar approach by the FCC would allow incumbent LECs to respond to competitive pressures where they occur in the access market, while maintaining market protections elsewhere.

b. Flexibility during the Proposed Phases

During Phase 1, the FCC would:

- (1) allow geographic deaveraging for all access charge elements other than the SLC;
- (2) allow volume and term discounts for all access charge elements;

²⁸NPRM at para. 155.